out the appellant as a trespasser. It would seem clear, therefore, that it was for the purpose of getting out of that difficulty that the appellant agreed to pay a sum of $3,000 which the respondent told her was to be paid to the landlord. Trouble arose when the respondent tried to get more money out of the appellant for the same purpose. How can the respondent, on the strength of any right which the landlord might have to possession of the premises, reassert a tenancy in himself?

As I have already said, the appellant was given exclusive possession of the premises under the oral agreement. In *Errington* v. *Errington*[3] Denning L.J. said:

"... although a person who is let into exclusive possession is, *prima facie*, to be considered to be a tenant, nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy. Words alone may not suffice. Parties cannot turn a tenancy into a licence merely by calling it one. But if the circumstances and the conduct of the parties show that all that was intended was that the occupier should be granted a personal privilege with no interest in the land, he will be held only to be a licensee."

In *Facchini* v. *Bryson*[4] the substantial issue was whether the agreement between the parties operated as a tenancy agreement or merely as a licence. It was held that the agreement must be construed as a whole and that the relationship between the parties must be determined by the law and not by the label which they chose to put on it. Somervell L.J. said, at page 1389:

"If, looking at the operative clauses in the agreement, one comes to the conclusion that the rights of the occupier, to use a neutral word, are those of a lessee, the parties cannot turn it into a licence by saying at the end 'this is deemed to be a licence'; nor can they, if the operative paragraphs show that it is merely a licence, say that it should deemed to be a lease."

Denning L.J. said at the same page:

"In all the cases where an occupier has been held to be a licensee there has been something in the circumstances, such as a family agreement, an act of friendship or generosity, or such like, to negative any intention to create a tenancy. In such circumstances it would be obviously unjust to saddle the owner with a tenancy, with all the momentous consequences that that entails nowadays, when there was no intention to create a tenancy at all."

In *Addiscombe Estates, Ltd.* v. *Crabbe*[5] Jenkins L.J. said:

"... the law remains that the fact of exclusive possession, if not decisive against the view that there is a mere licence, as distinct from a tenancy, is at all events a consideration of the first importance."

In the present case, there are clearly no circumstances of the sort mentioned by Denning L.J. in *Facchini* v. *Bryson*[4] to negative any intention to create a tenancy. The facts here are very similar to the facts in the case of *Goh Gok Hoon* v. *Abdul Hamid & Anor.*[6] The agreement here, as in that case, made no reservation whatever for the respondent to have any right to retain any portion of the premises for his own occupation. The leased business was no longer his own after it was taken over by the appellant, so that he could not be said to be in occupation of the premises. The appellant paid the rates and the employees in the shop were her servants. In reply to the appellant's letter of August 5, 1966, the respondent's then solicitor, Mr. Lee Kok Liang, said that the lease was for business goodwill only. In the circumstances, it cannot be understood how the business could be severed from the premises. To use the words of Ismail Khan J. (as he then was) in that case, exclusive possession, especially in the circumstances of this case, was not merely a hall-mark of a tenancy, but it was also in my opinion clear proof that the person having such possession was legally a tenant and not a licensee. The case of *Isaac* v. *Hotel de Paris, Ltd.*,[1] on which counsel for the respondent sought to rely and which found favour with the learned trial judge, has no bearing on the present case, as the respondent in that case was given merely the right of running a night bar to be managed by him on behalf of the respondent company.

I would allow the appeal and set aside the order made by the learned trial judge, and I agree with the learned Chief Justice that for the reasons he has stated the appellant be allowed only 75% of her taxed costs in the court below but that she be allowed full costs of this appeal.

Appeal allowed.

Solicitors: *Karpal Singh & Co.; Lim Cheng Ean & Co.*

GOVERNMENT OF MALAYSIA v. S. DREDGING CO. LTD.

[F.C. (Azmi L.P., Suffian & Gill F.JJ.) March 29, 1971]

[Kuala Lumpur — Federal Court Civil Appeal No. 51 of 1970]

Income Tax — Double taxation — Tax payable by foreign company — Tax credit due to company under double taxation agreement — Whether tax payable reduced by tax credit — Double Taxation (Relief) (U.K.) Order, 1949 — Income Tax Ordinance, 1947, ss. 40, 45 and 46.

Income Tax — Chargeable income — "Amount of tax payable by the company" — Whether computation includes U.K. tax credit — Income Tax Ordinance, 1947, s. 40(3), s. 46.

Interpretation — Allowance of deduction of tax credit from tax chargeable — Income Tax Ordinance, 1947, s. 40(3) — Change of language in corresponding provision of Income Tax Act, 1967, s. 108(4) — Effect of.

The respondent company for the relevant year of assessment received income both from the United Kingdom and from Malaya. It was assessed to tax on its total world income, less various deductions and allowances permitted under the Income Tax Ordinance, 1947. Tax on its chargeable income for the year of assessment was assessed at $595,620.41. When the company distributed dividends to its shareholders it deducted tax under section 40(1) of the Ordinance and the total amount of such deduction was $829,542.48.

The government contended that the computation of the amount of tax payable by the company for the purposes of section 40(3) of the Ordinance means not the amount of tax ordinarily payable by the company ($595,620.41) on its chargeable income, but that amount as reduced by the tax credit due to the company under section 46 of the Ordinance. The respondent company on the other hand contended that the amount of tax payable by the company means simply the amount of tax payable by it on its chargeable income without deduction of the United Kingdom tax credit. It was agreed that if the contention of the government was

correct, there would be an excess sum of $64,743.72 computed under the provisions of section 40(3) of the Ordinance due as a debt to the government.

Chang Min Tat J. accepted the argument of the respondent company and dismissed the claim of the government. On appeal,

Held, allowing the appeal: on the true construction of the Ordinance the amount of tax payable by the company was the amount as reduced by the tax credit due to it under the double taxation agreement and therefore judgment must be given to the appellant for the excess sum of $64,743.72.

Cases referred to:-

(1) *D.P. Khaitan* v. *Commercial Tax Officer & Ors.* A.I.R. 1956 Cal. 596.

(2) *S.P.L.P. Narayanan Chettiar* v. *M.A.R. Annamalai Chettiar* A.I.R. 1961 Mad. 313.

(3) *Comptroller-General of Inland Revenue, Malaysia* v. *T.* [1970] 2 M.L.J. 35.

(4) *Dewar* v. *Inland Revenue Commissioners* [1935] 2 K.B. 360.

(5) *A. Omnibus Co. Ltd.* v. *Government of the Federation of Malaya* [1961] M.L.J. 92.

FEDERAL COURT.

Dato' Mohamed Salleh bin Abas, Solicitor-General (*Nik Saghir bin Mohamed Noor*, Federal Counsel, with him) for the appellant.

Peter Mooney for the respondent.

In the court below (Kuala Lumpur — Civil Suit No. 1399 of 1966) *R. Padmanabhan* appeared for the plaintiff and *Peter Mooney* for the defendant. The following judgment was delivered on April 4, 1970:

Chang Min Tat J.: In this action the Government of Malaysia sues the S. Dredging Co. Ltd., a company incorporated in the States of Malaya with its registered office at an address in Kuala Lumpur, for $64,743.72 being a debt said to be due to the plaintiff from the defendant company under section 40 of the Income Tax Ordinance 1947. The particulars appended in the specially endorsed writ are as follows: —

Particulars

A:	Income tax deducted by the defendant company from dividends paid in 1962 -		$829,542.48
	Less:		
	The aggregate of		
B (i)	Income tax payable by the defendant company for the year of assessment 1962	$553,474.41	
B (ii):	Balance in 1962 carried forward from 1961 under section 40(5) - -	$211,324.35	$764,798.76
	Excess (debt due to the plaintiff)		$ 64,743.72

It is agreed between the parties that for the year of assessment the defendant company had a chargeable income of $1,489,051 and that in the year 1962, the company paid dividends amounting to $2,073,856.20 and deducted from the dividends tax under section 40(1) amounting to $829,542.48.

It is also common ground that the tax payable by the company in 1962 without taking into consideration any sums in respect of United Kingdom credit under the statutory relief from double taxation or tax paid at source in Malaysia was $595,620.41, at 40% of $1,489,051.00, and the amount of the balance carried forward from 1961 the previous year of assessment, again without taking into consideration the United Kingdom tax credit was $290,726.12. The net amount payable and demanded in a notice of assessment was $595,620.40 less $2,761.42 tax deducted at source and less the United Kingdom tax credit allowed, the net sum being $550,712.99.

Now the United Kingdom tax credit for 1962 amounted to $42,145.99 (which was the exact figure and not the round figure of $42,146.00 in the statement of claim — there is a certain inexactitude in the figures for the unit cent but it is of no material importance) and the accumulated United Kingdom tax credit from 1958 to 1961 inclusive and carried forward was $79,041.77.

At this stage, I propose for the sake of a more concise form of expression to refer to the income tax deducted by the company from dividends paid as A, the income tax payable by the company as B(i) and the balance carried forward as B(ii).

It is contended by Revenue that B(i) means, on the law as properly construed, the sum of $595,620.41 being income tax payable for 1962 less the United Kingdom tax credit of $42,145.99, *i.e.* the sum of $553,474.41 and similarly that B(ii) means $290,726.12 less $79,401.77 *i.e.* $211,324.35. Consequently under the provisions of section 40(3) which in its relevant portion reads:

"... and the Comptroller shall compare the amount of tax so deducted with the aggregate of the following amounts, namely, the amount of the tax payable by the company in respect of such year of assessment in accordance with the provisions of this Ordinance and the amount of the balance (if any) carried forward from any previous year of assessment in accordance with the provisions of sub-section (5) of this section."

and section 40(4) which reads:

"Notwithstanding any other provisions of this Ordinance, where the amount of tax so deducted exceeds the aggregate of the said amounts, a sum equal to the amount of such excess shall be a debt due from the company to the Government and shall be recoverable as such."

Revenue now claims the excess of $64,743.72 of A (*i.e.* $829,542.48) over B(i) and B(ii) ($553,474.41 + $211,324.35 = $764,798.76) as a debt due.

On the other hand, the defendant company says that B(i) should be $595,620.40 being properly the tax payable by the company for the year of assessment 1962 and B(ii) $290,726.12 being the amount of the balance carried forward from the 1961 year of assessment and since the aggregate of B(i) and B(ii) exceeds A ($829,542.48), there is in fact a sum of $56,804.04 which is to be carried forward to the 1963 year of assessment, under the provision of section 40(5) which reads as follows: —

"... Where the aggregate of the said amounts exceeds the amount of tax so deducted, a sum equal to the amount of the excess shall be carried forward as a balance to the immediately ensuing year of assessment, and such balance shall be available to be set off against the amount of tax deducted from dividends in such ensuing year of assessment in accordance with the provisions of this section:

Provided that at the end of the year of assessment 1956 the amount of the balance to be carried forward shall be the amount (if any) by which the tax paid or payable by the company in the said year of assessment and in all previous years of assessment under this Ordinance exceeds the amount of tax deducted by the company from all dividends paid to shareholders in all such years of assessment."

In short, the dispute in this case arises over whether B(i) "the amount of the tax payable by the company in respect of the year of assessment" in section 40(3) is the figure after deduction of the United Kingdom tax relief, as contended for by Revenue, or the figure without such deduction, as in the contention of the company. It will be seen that the difference in B(ii), being the accumulated past United Kingdom tax reliefs, falls squarely within the dispute. For this reason, the parties have agreed that if Revenue is right, the action must succeed and if the company is right, the action must fail.

For Revenue, it is argued that the tax payable is the tax chargeable less United Kingdom tax credit under section 46 and reliance is placed on two Indian cases: *D. P. Khaitan* v. *Commercial Tax Officer & Ors.*[1] and *S.P.L.P. Narayanan Chettiar* v. *M.A.R. Annamalai Chettiar.*[2] It is also contended that under section 46(1) the proper interpretation of the allowance of the United Kingdom tax credit as "a credit against tax payable in respect of that income in the Federation" is not to place this tax credit on the same footing as tax deducted at source on dividends declared in Malaysia and paid to shareholders, on the distinction between the former as merely a relief, which amount of the tax credit has not been paid into the coffers of this country but has been deducted by the United Kingdom company and paid to the Government of the United Kingdom and the latter as tax payable and actually paid by the company to this country.

Contra this argument, Mr. Mooney for the taxpayer submits that for the purpose of section 40(3), the tax payable as prescribed therein must be the income tax that is under section 10(1) payable upon the income of any person accruing in or derived from Malaysia or received in Malaysia from outside Malaysia. Further it is his contention that by the gradual process of ascertaining the tax payable as seen in the structure of the Ordinance, there is no basis for the deduction of the United Kingdom tax relief from the income payable under section 38(4). Part IV deals, as Mr. Mooney points out, with the ascertainment of income and provides for numerous deductions and allowances. Part V deals with the ascertainment of the statutory income which is the full amount of the taxpayer's income for the year preceding the year of assessment. Part VI deals with the ascertainment of the assessable income, which consists of the statutory income less the deductions permitted by Part VI, and Part VII deals with the ascertainment of the chargeable income, which consists of the assessable income less the deductions permitted by Part VII. Income tax is payable on the chargeable income under section 38 by all taxpayers with certain exceptions and under section 39 at a fixed rate by the persons excepted by section 38. The point of Mr. Mooney's argument is that there is no provision for making deduction from chargeable income, and that the tax payable in section 40(3) is the figure finally arrived after all deductions permissible under Parts IV, VI and VII are made. Such deductions do not include the United Kingdom tax credit, which, it is said, is a relief from tax which would otherwise be payable.

As a corollary to his argument, Mr. Mooney stresses the principles which should guide a court in the interpretation of statutes, in particular of tax statutes. I do not think it necessary for me to restate what Mr. Mooney has in his written submission so concisely written, but I am duly grateful. I do not however, think that it can be controverted that no tax can be imposed unless clearly expressed in a statute.

Now the matter before me, which is said to be a simple matter of construction, is on fuller consideration not so simple. That the legislature itself had some doubts on the question is very clearly seen by a comparison with section 108 of the Income Tax Act 1967 where the sum in B(i) is now expressed to be "the amount of the tax if any chargeable on the company on its chargeable income for that year of assessment less any relief given for that year of assessment under section 132 or 133." Section 132 empowers double taxation arrangements to be made and section 133 provides for relief from such taxation. I pause here to note that the first text of the Act No. 47 of 1967 is "tax payable (if any) by" which has been changed by an amending Act No. 77 of 1967 to "tax if any chargeable on." For myself I should not have thought that there was any necessity to further clarify the position by the additional amendment in view of the clear reference to the deduction of the tax credits arising from reliefs from double taxation, but whether there was any necessity or not, the amendment must at least appear to clarify that the tax payable is the tax chargeable on the chargeable income.

This change of language in the 1967 Act as first enacted and as subsequently amended must in my view necessarily support the contention that it clearly recognises that the 1947 Ordinance did not allow deductions of the United Kingdom tax relief to be made from the income payable for the purpose of section 40(3).

For the latest authority on the proposition that no tax can be imposed without authority clearly expressed in a statute and the presumption that statutes passed to amend the law are directed against defects which have come into notice about the time when those statutes were passed, see the decision of the Federal Court in *Comptroller-General of Inland Revenue, Malaysia* v. *T.*[3]

I have of course duly considered the arguments of Mr. Padmanabhan Federal Counsel for Revenue but with respect, I do not think that any resort to any dictionary, however standard the particular work is, can be of any assistance, as no definition can have any reference to the point in time when a tax becomes payable. The question has always been what is the time when the tax payable under section 40(3) is calculated, whether it is when it becomes payable or whether it is at any earlier stage, when the ascertainment from the chargeable income after allowing all deductions is made.

Further, again with respect, I do not think that the reliance of the learned Federal Counsel on the two Indian cases is sound. *Khaitan's* case, *supra*, is a decision on the meaning of "payable" in section 7(4a)(i) of the Bengal Finance (Sales Tax) Act No. 6 of 1941 of Bengal and I am of the view that this decision has, apart from general statements therein on interpretation of statutes, no relevance to the problem before me. Similarly with *Narayanan Chettiar's* case, *supra*, a decision on "debt payable" in the relevant sections of the Madras Agriculturists Relief Act No. 4 of 1938.

As for the $2,761.42 tax deducted at source in respect of income derived in Malaysia, nothing really turns on it, but I consider it consistent with the opinion I have formed that similarly this tax, which under section 42, is an allowance for tax charged by way of "set-off for the purpose of collection against the tax charged on that chargeable income" should not be deducted, as conceded by Revenue, from the income tax payable as the chargeable income, but while arithmetically nothing turns on this amount, I take the view that the very wording of section 42 argues for the contention of Mr. Mooney. If the tax paid in respect of income derived in Malaysia is to be treated as a set-off for purposes of collection, then it seems to me that to afford any real meaning to relief for United Kingdom tax credit, the United Kingdom tax credit must similarly not be deducted from the income tax payable on the chargeable income for the purpose of section 40(3).

But of course the objection to this by learned Federal Counsel is that the United Kingdom tax credit was not paid to the Government of Malaysia. Because of this distinction in the ultimate destination of the tax, he is prepared the concede that the $2,761.42 should not be deducted from the income tax payable but he is not so prepared to concede in the case of the United Kingdom tax credit.

On this point, I think the very wording of section 46 which deals with *inter alia* the United Kingdom tax credit is decisive. The tax payable and paid in the United Kingdom is to be allowed as a credit against tax payable in respect of that income in Malaysia. As the law stood in 1962, I form the opinion that on a proper construction of this section, the United Kingdom tax credit must similarly not be deducted from the tax payable for purposes of section 40(3), though ultimately for the purpose of actual discharge of the taxpayer's liability for income tax, he would not have to pay the amount represented by this credit. For myself, I can see no distinction or no valid distinction between "the credit against tax payable" in section 46 and "the set-off for the purposes of collection" in section 42, as I can find nothing in the Ordinance which says that the two allowances are to be separately treated.

I find confirmation for the view I have taken in the words of Lord Hanworth M.R. in *Dewar* v. *Inland Revenue Commissioners*[4] to which my attention was drawn by Mr. Mooney for the taxpayer: —

"It is said that singular results and even a loss of tax will occur on the appellants' contention, and that this cannot have been intended by the Legislature, but it is not for us to say, nor do we know, what the Legislature may or may not have meant, apart from their words, by which we are bound alike to what they say and in what they do not. Words which impose tax in general terms may still receive a particular limitation where the computation rules omit the directions appropriate and indispensable to levying the tax in the particular case.' That passage is very important. It supports the view presented by Sir Leslie Scott that you must construe the taxing Act strictly and you cannot apply a doctrine of analogies to it. You cannot impute what you may think the Legislature may or may not have meant; you are bound by the words as to what they have done and what they have not done."

And it is in the light of this passage that I do not, with respect, consider the various arithmetical possibilities predicated as they are on the fact that the amount represented by the United Kingdom tax credit was paid to the United Kingdom Treasury and the set-off for tax deducted at source was paid to the Malaysian Treasury, suggested by Mr. Padmanabhan for Revenue to be of any assistance in the construction of a tax law.

I share to an even greater degree, the diffidence expressed by Hill J.A. in his judgment in *A. Omnibus Co. Ltd.* v. *Government of the Federation of Malaya*[5] and I trust that if I have made any mistake it will be corrected in a higher Court but for the reason which I have given, I am of the view that the Government cannot succeed in this claim.

The action is accordingly dismissed with costs.

The appeal by the Government of Malaysia to the Federal Court was heard on January 11, 1971. The court took time to consider and on March 29, the court delivered judgment as follows:

Suffian F.J. (delivering the judgment of the court): We are of the opinion that this appeal which turns on the interpretation of the words "the amount of the tax payable by the company" in section 40(3) of the Income Tax Ordinance, 1947, should be allowed.

The agreed facts and the issue have been clearly stated in the judgment appealed against and there is no need for us to repeat them at length. Briefly, the respondent company for the year of assessment 1962 received income from the United Kingdom and income from Malaya. On its United Kingdom income it had paid tax to the United Kingdom authorities. To determine its Malayan income tax liability, first there was determined its world income, that is to say, both its United Kingdom income and its Malayan income. For the purposes of the Ordinance, its United Kingdom income was not the net dividend it received from the United Kingdom (*i.e.*, after deduction of United Kingdom tax) but the gross dividend (*i.e.*, before such deduction), sub-section (5) of section 46. That gross amount is added to its Malayan income, and after subtracting various deductions and allowances permitted under the Ordinance (the United Kingdom tax could not be deducted) there was left out of the aggregate of its United Kingdom and Malayan income, a balance called its chargeable income ($1,489,051) and it was on this that its Malayan tax liability was computed. It was liable to tax on its chargeable income, to the tune of $595,620.41.

Now before distributing dividends to its shareholders, it correctly deducted 40% under sub-section

(1) of section 40. It then submitted a return to the appellant showing the total amount of such deduction ($829,542.48). Under sub-section (3) of section 40 the appellant had to compare that amount with the aggregate of —

(a) the amount of the tax payable by the company and

(b) the amount of the balance (if any) carried forward from any previous year of assessment in accordance with the provisions of sub-section (5) of section 40.

Under sub-section (4), if the amount of deduction exceeded the aggregate, the excess became a debt due to the appellant.

It is at this point that a dispute arose between the parties. The Revenue says that the amount of the tax payable by the company means not the amount of the tax ordinarily payable by the company ($595,620.41) on its chargeable income, but that amount as reduced by the tax credit due to the company. The company, on the other hand, says that the amount of the tax payable by the company means simply the amount of the tax payable by it on its chargeable income without deduction of the United Kingdom tax credit. It is agreed that if the Revenue is right, there is an excess and its claim must succeed, but if the company is right, there is no excess and Revenue's claim must be dismissed.

Mr. Mooney for the company repeats before us the arguments he used in the lower court, and as they have been well summarised in the judgment appealed against, there is no need for us to reproduce them.

In our judgment, Mr. Mooney's arguments cannot be accepted.

It should be noted that the relevant words in dispute did not consist simply of the words reproduced in the first sentence of this judgment, but consisted of the words "the amount of the tax *payable* by the company . . . *in accordance with the provisions of this Ordinance* . . . ". Observe the words underlined. What the Revenue must have regard to is not simply the amount of the tax payable by the company on its chargeable income, but the amount of the tax payable in accordance with the provisions of the Ordinance. To determine the amount of the tax actually payable by the company, one must therefore look at all the relevant provisions of the Ordinance, the most important being section 46. Ordinarily the company's tax liability would have been computed simply on its chargeable income and it would have had to pay tax on the amount so computed, but as it had already paid tax to the United Kingdom Revenue on its dividends and as there was a double taxation agreement made under the authority of section 45 between our Government and the United Kingdom Government, the Double Taxation (Relief) (United Kingdom) Order, 1949, printed at page 149 of the reprint of the Ordinance (Reprint No. 8 of 1966)), section 46 applied and the company became entitled to relief called tax credit. This credit was not the amount of tax it had actually paid to the U.K. Revenue, but fell to be computed in accordance with the formula set out in sub-sections (3) and (4) of section 46 (the amount is not in dispute). Then comes the all-important sub-section (2) which says —

"The amount of the income tax chargeable in respect of the income shall be reduced by the amount of the credit. . .".

This means, in our opinion, that in fact the amount of the tax payable by this company was an amount as reduced by the tax credit due to it under the double taxation agreement, and not the amount of tax that would have been due ordinarily on its chargeable income. In construing the disputed words in sub-section (3) of section 40, we do not see how sub-section (2) of section 46 can be ignored. We therefore hold that the disputed words mean the amount of the tax due on the company's chargeable income as reduced by its tax credit. In our view, this is quite plain from the language of the Ordinance itself.

We are not unmindful of Mr. Mooney's argument that the language of sub-section (3) of section 40 of the Ordinance should be contrasted with the language of the corresponding provision (sub-section (4) of section 108) of the Income Tax Act No. 47 of 1967 which expressly allows the deduction of any tax credit from the tax chargeable on the company. In our judgment, it is plain that the same may be done even under the 1947 Ordinance and the change of language in the current Act was made not to remove any ambiguity but *ex abundanti cautela*.

We would therefore set aside the judgment appealed against and enter judgment for the appellant as prayed, the respondent company to pay costs here and below.

Appeal allowed.

Solicitors: *Skrine & Co.*

TONG LEE HWA & ANOR. v. CHIN AH KWI
TONG CHONG FAH v. CHIN AH KWI

[F.C. (Ong C.J. (Malaya), Gill & Ali F.JJ.) April 1, 1971]

[Kuala Lumpur — Federal Court Civil Appeals Nos. 40 & 41 of 1970]

Probate and Administration — Settlement of probate action on terms incorporated in schedule to court order — Application to vary terms of settlement — Contracts (Malay States) Ordinance, 1950, s. 61.

Probate and Administration — Wills — Probate action — Settlement of on terms incorporated in schedule to court order — Agreement entered into by parties in terms of the settlement — Effect of.

Contract —Probate action — Settlement of on terms incorporated in schedule to court order — Agreement entered into by parties in pursuance of settlement — New contract — Effect of — Contracts (Malay States) Ordinance, 1950, s. 61.

Practice and Procedure — Judgment by consent — Variation order — Whether court has jurisdiction to make — "Liberty to apply" — Meaning of — R.S.C. 1957, O. 28, r. 11.

This case originated as a probate action which arose from the existence of three or four wills alleged to have been executed by one Chi Liung deceased shortly before her death. The deceased was the governing director